



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

January 23, 2015
OM 14-33B

Mr. Mike Buckley

Re: Buckley v. Rhode Island Turnpike and Bridge Authority

Dear Mr. Buckley:

This correspondence serves as a supplemental finding to Buckley v. Rhode Island Turnpike and Bridge Authority, OM 14-13, released October 17, 2014. In Buckley, we reviewed your August 14, 2014 Open Meetings Act ("OMA") complaint and concluded that the Rhode Island Turnpike and Bridge Authority ("RITBA") violated the OMA when it failed to timely post its minutes for the July 9, 2014 meeting on the Secretary of State's website in violation of R.I. Gen. Laws § 42-46-7(d). The sole issue to be addressed in this supplemental finding is whether the RITBA's violation was willful or knowing.

In response to our finding, on October 30, 2014, this Department received a response from the RITBA's legal counsel, William E. O'Gara, Esquire, who provided an affidavit from the RITBA's Executive Director, Mr. Buddy Croft. In pertinent part, Attorney O'Gara relayed:

"The practice followed by the [RITBA] has been to hold monthly meetings (with proper notice) and to approve the minutes of the previous meeting. Because the board has typically met each month, the minutes from the prior meeting would be approved and posted in a timely manner.

* * *

The failure to post the minutes within 35 days, while a violation of a provision of the Open Meetings Act, is not akin to behavior that constitutes a willful violation.

* * *

In the instant case there are no facts that suggest that the [RITBA] consciously chose not to comply with the law. It acted in good faith to comply with the spirit and requirements of the Open Meetings Act."

Mr. Croft states, in pertinent part:

“I am the Executive Director of the [RITBA] and have served in the position since July 2006.

Since I have been the Executive Director, we have taken steps to comply with the Open Meetings Act. * * * [T]he practice followed has been for my staff to prepare detailed minutes of board [meetings] and to post the minutes on the Secretary of State website.

The board typically meets on a monthly basis and will approve the minutes of the prior meeting which are in turn posted. Once approved by the board, the minutes would be posted.

Following receipt of the complaint the practice was then changed to post minutes following the meeting before the next board meeting.

I was not aware that the law required the posting of minutes within 35 days of the meeting. Now that I am aware of this requirement, I have directed my staff to file minutes within 35 days even if the Board has not met to approve the minutes.”

The RITBA proffers it acted in “good faith to comply with the spirit and requirements of the [OMA]” and legal counsel also suggests “the [RITBA] did not consciously [choose] not to comply with the law.”

In Carmody v. Rhode Island Conflict of Interest Commission, 509 A.2d 452 (R.I. 1986), the Rhode Island Supreme Court examined the legal standard for a “knowing and willful” violation. As summarized in a later case, DiPrete v. Morsilli, 635 A.2d 1155, 1163-64 (R.I. 1994), the Court:

“has held that when a violation of the statute is reasonable and made in good faith, it must be shown that the official ‘either knew or showed reckless disregard for the question of whether the conduct was prohibited by [the] statute * * * . Consequently an official may escape liability when he or she acts in accordance with reason and in good faith. We have observed, however, that it is ‘difficult to conceive of a violation that could be reasonable and in good faith. In contrast, when the violative conduct is not reasonable, it must be shown that the official was ‘cognizant of an appreciable possibility that he [might] be subject to the statutory requirements and [he] failed to take steps reasonably calculated to resolve the doubt.’” (internal citations omitted). (Emphasis added).

In your rebuttal, you reference this Department’s finding in Block v. Rhode Island State Properties Committee, OM 14-26B (“Committee”), where this Department filed a civil lawsuit against the Committee for its failure to timely post meeting minutes. The facts in that case, however, are distinguishable from the instant case because the Committee failed to file minutes

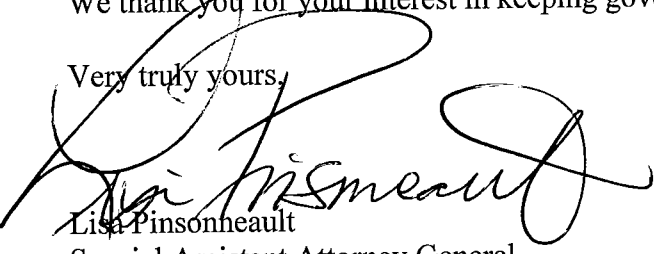
on the Secretary of State's website for four (4) of its meetings and filed the minutes for one (1) of its meetings outside the timeframe required under R.I. Gen. Laws § 42-46-7(d). Additionally, by its own admission, the Committee was "at all times material hereto * * * aware of its statutory obligation to file meeting minutes with the Secretary of State." The Committee's candid admission evinced that it was aware it was statutorily obligated to file its meeting minutes on the Secretary of State's website in a timely manner and the Committee in fact had timely filed other meeting minutes on the Secretary of State's website in accordance with R.I. Gen. Laws § 42-46-7(d).

Based upon the totality of the evidence, and considering the "willful and knowing" standard articulated by the Supreme Court, we cannot conclude that the RITBA willfully or knowingly violated the OMA. The facts establish that the RITBA failed to file minutes on the Secretary of State's website for its July 9, 2014 meeting in a timely manner, but the facts also demonstrate that the RITBA did not have a meeting in August 2014. Rather, the RITBA next met on September 10, 2014 and it was at that meeting that the RITBA approved the minutes for the July 9, 2014 meeting. Since the RITBA did not meet in August 2014, and because R.I. Gen. Laws § 42-46-7(d) required the RITBA to post "official and/or approved minutes," it is difficult for this Department to find a willful or knowing violation based upon these facts. Indeed, the RITBA could not "approve" its July 9, 2014 meeting minutes because it did not meet in August. While arguably the RITBA could have posted "official" meeting minutes on the Secretary of State's website within thirty-five days of the meeting, the lack of definition and/or any authority to guide a public body concerning what constitutes "official" minutes provides sufficient support for our conclusion. See R.I. Gen. Laws 42-46-7(d) ("all state public and quasi-public boards, agencies and corporations, * * * shall keep official and/or approved minutes of all meetings of the body and shall file a copy of the minutes of all open meetings with the secretary of state for inspection by the public within thirty-five (35) of the meeting").

Although the Attorney General will not file suit in this matter, nothing in the OMA precludes an individual from pursuing an OMA complaint in the Superior Court. The complainant may do so within ninety (90) days from the date of the Attorney General's closing of the complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later. R.I. Gen. Laws § 42-46-8. Please be advised that we are closing our file as of the date of this letter.

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,



Lisa Pinsonneault

Special Assistant Attorney General
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Cc: William E. O'Gara, Esquire